SUPREME COURT, U.S.

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No. 393

In the Supreme Court of the United States

OCTOBER TERM, 1963

R. S. HOOPER, APPELLANT,

vs.

JOHN A. DUNCAN, SUPERINTENDENT, DEPARTMENT OF LIQUOR LICENSES AND CONTROL OF ARIZONA; ELMO RUNNELS (TEX) ADKINS AND DOROTHY L. ADKINS, HIS WIFE, APPELLEES,

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

JURISDICTIONAL STATEMENT

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R. S. HOOPER, APPELLANT,

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JOHN A. DUNCAN, SUPERINTENDENT, DEPARTMENT OF LIQUOR LICENSES AND CONTROL OF ARIZONA; ELMO RUNNELS (TEX) ADKINS AND DOROTHY L. ADKINS, HIS WIFE, APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

JURISDICTIONAL STATEMENT

Appellant appeals from the Judgment of the Supreme Court of the State of Arizona entered on February 26, 1964. Motion for Rehearing denied March 24, 1964, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The Opinion of the Supreme Court of the State of Arizona (Appendix, *infra*, pp. 19 to 24) is reported at 389 P2d 706. The Order denying rehearing is contained in Appendix, *infra*, pp. 25 to 26. The Orders and Judgment of the Superior Court of the State of Arizona, in and for the County of Maricopa (trial court) is contained in Appendix, *infra*, pp. 27 to 32. The Notice of Appeal to the Supreme Court of the United States (Appendix, *infra*, pp. 33 to 38) was filed on June 18, 1964, with the Clerk of the Supreme Court of the State of Arizona.

JURISDICTION

The Opinion of the Supreme Court of the State of Arizona was entered on February 26, 1964, Appendix, *infra*, pp. 19 to 24; rehearing denied March 24, 1964, Appendix, *infra*, pp. 25 to 26, and Notice of Appeal was filed in that Court on June 18, 1964, Appendix, *infra*, pp. 33 to 38. The jurisdiction of the Supreme Court of the United States to review this Decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following Decisions sustain the jurisdiction of the Supreme Court of the United States to review the Judgment on direct appeal in this case: *Cantwell v. State of Connecticut*, 310 U.S. 296; *Atlantic Coast Line R. Co. v. Phillips*, 332 U.S. 168; *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179; *Atchison T. & S.F. Ry. Co. v. Public U. Commission*, 346 U.S. 346.

QUESTION PRESENTED

Whether State legislation enacted in 1961 which prohibits the future leasing of liquor licenses, terminates

all existing leases of such licenses on December 31, 1963, and permits a liquor license lessee to obtain a license identical to that formerly leased, is constitutional; specifically, does such State legislation (a) unconstitutionally impair the obligation of a contract; (b) deprive a liquor license lessor of property without due process of law; or (c) deny such a lessor equal protection of the law.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This appeal involves Article I, Section 10, and Amendment XIV of the Constitution of the United States of America. The State legislation involved in this appeal is Sections 4-203 E., F., G. and 4-211, of the Arizona Revised Statutes (1956), as set forth at pages 51 and 59 of the 1963 Cumulative Pocket Parts, Volume 2, Arizona Revised Statutes. The text of these statutes respectively provide as follows:

A.R.S. 4-203. Licenses; issuance; contents; transfers; suspension or revocation; reversion to state

"E. No spirituous liquor license shall be assigned, transferred or sold, except as provided for in this title. No spirituous liquor license shall be leased or subleased, except that for the purpose of preserving rights and duties that have already matured, any licensee who has leased a spirituous liquor license under a lease in effect on the effective date of this subsection shall, after examination of such lease by the superintendent, be permitted to continue the lease according to its terms, and the license shall revert to the lessor upon expiration of the lease, or upon any termination of the lease, or by December 31, 1963, whichever is sooner.

"F. Every license issued under this title before, on or after the effective date of this subsection shall revert to the state forthwith if the licensee does not use the license, in a business established for such purpose, within six months after the effective date of this subsection, or within six months after the date of issuance of the license, whichever is later, except that the superintendent may grant an additional period of time of not more than six months if in his judgment the licensee is in good faith attempting to comply with the provisions of this subsection.

"G. A license which has been placed in use within the time prescribed by subsection F and which subsequently is not used by the licensee for a period in excess of six months shall revert to the state, except that the superintendent may grant additional time if, in his judgment, the licensee is in good faith attempting to comply with this subsection."

"§ 4-211. License authorized upon loss of license by lessee of lease; issuance; transferability

"A. Upon the reversion of a license as provided in § 4-203, subsection E, the superintendent shall issue to the lessee from whom the license reverted a license of the same class as that which reverted, provided such lessee makes application within six months from the date of reversion for such license in accordance with § 4-201.

"B. The license shall be issued in the name of the applicant, provided the applicant is otherwise qualified to have such license issued. The holder of the license shall be subject to the penalties prescribed for any violation of the law relating to alcoholic beverages.

"C. The provisions of § 4-206 shall not apply to nor in any manner restrict the issuance of a license issued under the provisions of this section.

"D. Such license shall be transferable from location to location."

STATEMENT OF THE CASE

I. Facts

The facts in this case are not in dispute, the parties having prepared and submitted the cause upon a written Agreed Statement of Facts. In 1955 the Appellant by purchase for a fairly large and valuable consideration acquired a State of Arizona, Series #6, spirituous liquor license. On May 16, 1955, Appellant entered into a written Agreement and Lease with the Appellees Adkins, whereby Appellant's liquor license, for an agreed monthly sum, was leased to said Appellees for a period of five (5) years, terminating on June 9, 1960. The Appellees Adkins, as lessees, agreed that even though the annual renewal was taken in their names, they would at all times recognize the paramount ownership and right of the Appellant lessor. On June 9, 1960, the parties entered into a second Agreement and Lease of Appellant's license. By the express terms and provisions of the second Agreement and Lease, the license was leased for a period of five (5) years, terminating on June 9, 1965.

Since 1938 the Appellee, John A. Duncan, as Superintendent of the Arizona State Department of Liquor Licenses and Control, has permitted, approved and recognized such leasing arrangements and during the term of the aforesaid Lease had approved each annual renewal of the leased license.

In 1961 the State Legislature of Arizona enacted legislation, the effect of which was to prohibit prospectively the future leasing of spirituous liquor licenses.

The legislation in question avowedly sought to preserve rights and duties that had already matured. This is evidenced by the provisions of Arizona Revised Statutes, Section 4-203 E., as follows:

> "E. No spirituous liquor license shall be assigned, transferred or sold, except as provided for in this title. *No spirituous liquor license shall be leased or subleased, except that for the purpose of preserving rights and duties that have already matured, any licensee who has leased a spirituous liquor license under a lease in effect on the effective date of this subsection shall, after examination of such lease by the superintendent, be permitted to continue the lease according to its terms, and the license shall revert to the lessor upon expiration of the lease, or upon any termination of the lease, or by December 31, 1963, whichever is sooner.*" (Emphasis supplied).

The written Agreement and Lease between Appellant and Appellees Adkins was executed a year prior to the enactment of this legislation. By the express provisions of said Agreement it was not to terminate until June 9, 1965, approximately 18 months after December 31, 1963, which was the terminal date set by the legislation complained of. The Agreement and Lease was not terminated by the parties, nor did it expire by December 31, 1963.

II. The Proceedings Below: How the Federal Question is Presented; Decision of a Federal Question

On November 14, 1963, the Appellant filed a complaint in the Superior Court of the State of Arizona, in and for the County of Maricopa, seeking declaratory relief adjudging Sections 4-203 E., F., G. and 4-211 of the Arizona Revised Statutes to be void, unconstitutional, ineffective, and without force of law. Alterna-

tively, Appellant sought a judgment declaring the legislation in question inapplicable to his contract with Appellees Adkins, since the contract was in existence and had been entered into prior to the enactment of said legislation. Appellant sought declaratory judgment based on the express allegations contained in the Complaint to the effect that such legislation violated the provisions of Article I, Section 10, of the United States Constitution, and Amendment XIV thereto.

On December 10, 1963, the Superior Court entered its written Orders and Judgment (Appendix, *infra*, pp. 27 to 32), setting forth the issue as follows:

> "The sole issue is the constitutionality of the legislative act which prohibits future 'leasing' of liquor licenses and which terminates all 'leases' as of December 31, 1963, unless they have theretofore expired by their own terms, in which event they shall not be renewed." Appendix, p. 29, *infra*.

The Superior Court ultimately found the challenged legislation constitutional, i.e.:

> "The court finds that the statute is constitutional in relation to the interrelation of the Superintendent and the person who has the responsibility for the operation of the license." Appendix, p. 31, *infra*.

An appeal to the Supreme Court of the State of Arizona was perfected on December 16, 1963. The Federal questions were raised and presented to the appellate State Court by appropriate assignments of error. The Court below in its written Opinion recognized that these important questions had been raised and presented. This is evidenced by the following language in the Opinion:

"Appellant contends the statutory amendments constitute an unreasonable exercise of police power which impairs the obligation of contract. Alternatively, if these amendments are held constitutional, appellant maintains that they have no retroactive effect, but only prohibit any leasing of liquor licenses after October 29, 1961, the effective date of the amendment." Appendix, p. 21, *infra*.

* * *

"Appellant contends, however, that a liquor license, once acquired, is a property right with a peculiar and special value and that the 1961 amendments unconstitutionally deprive appellant of property without compensation." Appendix, p. 21, *infra*.

The Court below was of the opinion that as between the licensee and the State, a liquor license was a priviledge subject to the police power of the State, and not a property right or a contract in the legal or constitutional sense, and concluded:

"State control of liquor licenses under the police power ranges from complete prohibition to lesser degrees of regulation and surveillance. Kearns v. Aragon, 333 P3d 607, 610 (N.M., 1958). It is the province of the Legislature to determine to what extent such regulation shall be exercised. The prohibition of the leasing of liquor licenses comes within such State control." Appendix, p. 24, *infra*.

In reaching this conclusion the Court below relied almost exclusively upon the cases of *Gherna v. State*, 16 Ariz. 344, 146 Pac. 494 (1915), and *Boston Beer Company v. Massachusetts*, 97 U.S. 25 (1877), both of which were criminal in nature and concerned with confiscation of intoxicating liquors in connection with state laws completely prohibiting the manufacture and sale of intoxicating liquors.

Appellant duly moved for a rehearing solely on the Federal questions involved. Such Motion is of record on file with the Clerk of this Court. Appellant's Motion for Rehearing was denied. This appeal followed.

THE QUESTIONS ARE SUBSTANTIAL

1. It is Appellant's primary contention that the legislation in question impairs the obligations of a private contract in direct violation of the constitutional interdiction imposed by the provisions of Article I, Section 10, of the Federal Constitution.

The cases are legion that where there is reliance on the contract clause of the Federal Constitution, the Supreme Court can independently examine the contract along with the questioned legislation and determine for itself the nature and effect of the contract, and whether it has been impaired. *Violet Trapping Co. v. Grace*, 297 U.S. 119; *U. S. Mortgage Co. v. Matthews*, 293 U.S. 232; *Funkhouser v. Preston Co.*, 290 U.S. 158; *Larson v. South Dakota*, 278 U.S. 429; *Jefferson Bank v. Skelly*, 1 Black. 436.

An examination of the contract entered into by the Appellant and Appellees Adkins (which is of record on file with the Clerk of this Court) discloses that the subject matter of the contract was a spirituous liquor license which Appellant agreed to lease to said Appellees for a period of five (5) years at an agreed monthly rental. Two essential salient features appear in the subject contract, i.e.:

a. The contract was executed on June 9, 1960.

b. The Appellant agreed to lease the license "* * * *for a period of five (5) years, commencing on the 10th day of June, 1960, and terminating on the 9th day of June, 1965.*"

On October 29, 1961, the questioned legislation as presently codified in Sections 4-203 E., F., G. and 4-211 of the Arizona Revised Statutes became effective. The immutable fact that a contractual impairment resulted from this legislation is clearly evidenced by the anomolous 95-word sentence of Section 4-203 E., i.e.:

> "* * * No spirituous liquor license shall be leased or subleased, except that for the purpose of preserving rights and duties that have already matured, any licensee who has leased a spirituous liquor license under a lease in effect on the effective date of this subsection shall, after examination of such lease by the superintendent, be permitted to continue the lease according to its terms, and the license shall revert to the lessor upon expiration of the lease, or upon any termination of the lease, or by December 31, 1963, whichever is sooner."

A summary quantative analysis of the afore-quoted sentence and its effect on the instant contract discloses the following anomaly:

a. A prospective prohibition against leasing or subleasing of spirituous liquor licenses;

b. An avowed express legislative intention to preserve rights and duties in existing lease agreements according to their terms;

c. A repudiation of the express avowal by selection of an arbitrary terminal date.

That the legislation in question has the unalterable effect of impairing the obligation of contract is further demonstrated by the provisions of Section 4-211 (Arizona Revised Statutes) which require the Superintendent of Liquor Licenses and Control, upon proper application of a former lessee, to issue another license of the same class as that formerly leased. And by this same statute, the provisions of Section 4-206 (Arizona Revised Statutes) limiting the number of spirituous liquor licenses which may be issued are expressly rendered inapplicable to such "lessee-licenses." Thus in effect, a lessee by the interrelationship of this legislation is allowed to retain the benefits of a private contract and is relieved of his corresponding contractual duties and obligations.

The Courts of California when confronted with legislation affecting private contracts involving liquor licenses have not hesitated to afford such contracts constitutional immunity from legislative impairment. *Belle Isle v. Hempy*, 23 Cal. Rptr. 599; *Golden v. State of California*, 133 Cal. App. 2d 640, 285 P2d 49; *Pehau v. Stewart*, 112 Cal. App. 2d 90, 245 P2d 692. In *Belle Isle v. Hempy*, supra, the Court was concerned with legislation prohibiting a liquor licensee from entering into any agreement wherein he pledged the transfer of his license as security for a loan or as security for the fulfillment of any agreement. The Court there astutely observed that such legislation was inapplicable to contracts entered into prior to the effective date of the legislation; that such agreements enjoy constitutional immunity from legislative impairment and are not subject to deprivation by retroactive operation of the legislation. The same constitutional principles are applicable here, especially when this agreement at the time it

was executed was neither illegal nor contrary to public policy.

2. Closely allied with Appellant's primary contention that the legislation in question unconsitutionally impairs the obligation of contract is his contention that this legislation as enacted deprives him of property without due process of law and denies him equal protection of the law. Amendment XIV, Constitution of the United States of America.

The Court below in its written Opinion and consistent with its former decisions, stated that with respect to the relationship between a licensee and third persons a liquor license is a property right with unique value; however, the Court in concluding that it is not a property right in the legal or constitutional sense alluded to the credulous distinction that as between the licensee and the State it is merely a privilege, subject to the police power of the State. (Appendix, p. 22, *infra*).

This distinction and technical classification of rights relating to licenses is valueless when realistic judicial consideration is given to the proposition that the license, once granted, along with its attendant use and enjoyment had a substantial dollar value, and afforded to its possessor something of value which had all the qualities of property. Such niceties of distinction and classification as employed by the Court below are no answer to the broad protection afforded by the 14th Amendment. These unrealistic distinctions and classifications were recently rejected by the Federal District Court in the case of *Lewis v. City of Grand Rapids, Michigan*, 222 Fed. Supp. 349, where the Court in an exhaustive opinion determined that a liquor license was properly classifiable as property within the meaning

of and subject to the safeguards of the 14th Amendment. Accordingly, it is submitted, that in this instance Appellant's license, his interests in the license, and the contractual benefits inuring to him by the provisions of the lease agreement, constitute property which is subject to constitutional protection.

3. Admittedly, the questioned legislation concerns an area within the regulatory police power of the State of Arizona; however, it is respectfully submitted that its inherent invidious discriminatory features unconstitutionally deny Appellant equal protection of the law. And although this Court has been reluctant to interfere with domestic policy within the regulatory police power of a State, it has clearly indicated that it will do so when such regulatory statutes run afoul of some specific Federal constitutional prohibition. *Ferguson v. Skrupa*, 372 U.S. 726. And this Court has not hesitated to do so when the discriminatory classification has no reasonable relation to the purpose for which it is made. *Morey v. Doud*, 354 U.S. 457; *Hartford Co. v. Harrison*, 301 U.S. 459; *Smith v. Cahoon*, 283 U.S. 553.

In the instant case the legislation as applied to all of the lease agreements then existing permitted many of them to continue until the date of their expiration as contractually set forth, but terminated those, such as Appellant's and others similarly situated, which by their terms remained in effect subsequent to December 31, 1963. Such arbitrary selection in a statute cannot be justified by calling it "classification," especially when, as here, the Legislature has declared in the same subsection that, "* * * *for the purpose of preserving rights and duties that have already matured* * * *" any licensee who has leased a license under a lease in effect

on the effective date of the legislation shall "* * * *be permitted to continue the lease according to its terms* * * *".

Unquestionably, the resultant effect of the provisions of Sections 4-203 E., F., G. and 4-211 impairs the obligation of an existing contract in direct contradiction of Federal constitutional provisions. Further, it offends the "equal protection" clause of the Federal Constitution for the reason that the discriminatory classification has no reasonable relation to the purpose for which it is made in view of the State Legislature's expression and intention to allow all existing lease agreements to continue according to their terms.

Though the concept of equal protection of the law and due process are not co-terminus in their spheres of protection, equality of right is fundamental in both, and each forbids class legislation arbitrarily discriminatory against some and favoring others in like circumstances.

Objectively it must be recognized that this may be only a small singular voice raised in constitutional protest of this type of legislation. And although the resultant injury to appellant and others similarly situated is substantial, the question presented is not on the same plane as those concerning a human life. However, the appeal pointedly focuses attention upon the question of whether the State Legislature, under the flimsy fashionable pretext of "police power" can invalidate and make a mockery out of valid existing agreements. This question, it is believed, is of sufficient present-day importance to require plenary consideration by this Court.

It is submitted that the decision of the Supreme Court of the State of Arizona fails to recognize the constitutional limitations and prohibitions imposed upon enactment of the legislation which is the subject of this appeal.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the questions presented by this appeal are substantial and are of public importance.

Respectfully submitted,

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APPENDIX

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APPENDIX

I

IN THE SUPREME COURT
OF THE STATE OF ARIZONA
En Banc

No. 8182

R. S. HOOPER, *Appellant*,

v.

JOHN A. DUNCAN, *Superintendent*,
Department of Liquor Licenses
and Control of Arizona;

ELMO RUNNELS (TEX) ADKINS and
DOROTHY L. ADKINS, his wife, *Appellees*.

Appeal from the Superior Court of Maricopa County
The Honorable Henry S. Stevens, Judge
Judgment Affirmed

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LOCKWOOD, Vice Chief Justice:

This case concerns the validity of recent Arizona legislation terminating the leasing of liquor licenses in Arizona.[1] The lower court upheld the validity of this legislation and this appeal resulted.

The pertinent facts are as follows: Appellant in 1955 acquired a liquor license from a previous holder for the the consideration of $32,500. On May 16, 1955, appellant leased his liquor license to appellees Adkins for a five-year period commencing June 10, 1955, and ending June 9, 1960. The lessees agreed that even though the annual renewal was taken in their names, they would at all times recognize the paramount ownership

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1 On October 29, 1961, the Arizona Legislature amended A.R.S. §§ 4-203 and 4-211 to read in part as follows:

§ 4-203 E. "No spirituous liquor license shall be assigned, transferred or sold, except as provided for in this title. No spirituous liquor license shall be leased or subleased, except that for the purpose of preserving rights and duties that have already matured, any licensee who has leased a spirituous liquor license under a lease in effect on the effective date of this subsection shall, after examination of such lease by the superintendent, be permitted to continue the lease according to its terms, and the license shall revert to the lessor upon expiration of the lease, or upon any termination of the lease, or by December 31, 1963, whichever is sooner."

§ 4-203 F. "Every license issued under this title before, on or after the effective date of this subsection shall revert to the state forthwith if the licensee does not use the license, in a business established for such purpose, within six months after the effective date of this subsection, or within six months after the date of issuance of the license, whichever is later, except that the superintendent may grant an additional period of time of not more than six months if in his judgment the licensee is in good faith attempting to comply with the provisions of this subsection."

§ 4-203 G. "A license which has been placed in use within the time prescribed by subsection F and which subsequently is not used by the licensee for a period in excess of six months shall revert to the state, except that the superintendent may grant additional time if, in his judgment, the licensee is in good faith attempting to comply with this subsection."

§ 4-211 A. "Upon the reversion of a license as provided in § 4-203, subsection E, the superintendent shall issue to the lessee from whom the license reverted a license of the same class as that which reverted, provided such lessee makes application within six months from the date of reversion for such license in accordance with § 4-201."

and rights of the lessor. On June 9, 1960, the parties agreed to another five-year lease terminating on June 9, 1965.

Since 1938 appellee Duncan, as Superintendent of the State Department of Liquor Licenses and Control, had recognized such leasing arrangements and had approved the annual renewal of the licenses. But on October 29, 1961, the amendments to A.R.S. §§ 4-203 and 4-211 became effective and such leasing of liquor licenses was prohibited. Appellant then brought this declaratory judgment action to test the validity and application of these amendments. Appellant contends these statutory amendments constitute an unreasonable exercise of police power which impairs the obligation of contract. Alternatively, if these amendments are held constitutional, appellant maintains that they have no retroactive effect, but only prohibit any leasing of liquor licenses after October 29, 1961, the effective date of the amendment.

A liquor license is a temporary privilege, personal in nature, issued in the exercise of the police power of the state. No one has an absolute right to the issuance of such a license .To qualify for a liquor license, the applicant must meet the requirements set forth in A.R.S. § 4-201. See Clark v. Tinnin, 81 Ariz. 259, 304 P.2d 947 (1956) and Stanton v. Superior Court, 55 Ariz. 514, 103 P.2d 952 (1940).

Appellant contends, however, that a liquor license, once acquired, is a property right with a peculiar and special value and that the 1961 amendments unconstitutionally deprive appellant of property without compensation. But an important distinction exsits concerning the rights of the licensee in relation to third

persons and in relation to the state. Roehm v. Orange County, 196 P.2d 550 (Cal. 1948) and Jaffe v. Pacific Brewing & Malting Co., 124 Pac. 1122 (Wash. 1912). As between the licensee and third persons, a liquor license is a property right with unique value. Siler v. Superior Court, 83 Ariz. 49, 316 P.2d 296 (1957); Duncan v. Truman, 74 Ariz. 328, 248 P.2d 879 (1952); and Hom Moon Jung v. Soo, 64 Ariz. 216, 167 P.2d 929 (1946). But as between the licensee and the state, a liquor license is merely a privilege subject to the police power of the state; it is not a "property right" or a "contract" in the legal or constitutional sense of those terms.

This Court in Gherna v. State, 16 Ariz. 344, 146 Pac. 494 (1915) set forth the right of the state to regulate the business of selling intoxicating liquors to the point of absolute prohibition. The *Gherna* case involved an appeal from a conviction for selling liquor in violation of an amendment to the Arizona Constitution prohibiting the sale of liquor. The appellant there contended the amendment confiscated his property rights. Expressly holding that state prohibition of the sale of liquor is not open to constitutional objections, this Court stated in *Gherna* at 363-365:

> "A license for the sale of liquor is not a contract between authority, federal, state or municipal, granting it, and the person to whom it is issued, in any such sense as to be within the protection of constitutional guaranties."
>
> * * *
>
> "A license for the sale of liquor is in effect a mere permit, affording protection to the holder against legal animadversion for acts which, without its sanction, would be illegal and punishable."
>
> * * *

"It is well-settled law that a statute absolutely prohibiting, within the limits of the state, the manufacture and sale of intoxicating liquors as a beverage is a lawful exercise of the police power of the state, and is not open to constitutional objection, either on considerations of natural right or of the specific limitations of state powers. 23 Cyc. 77. Such a statute, although it may deprive persons of the right to pursue a business which was previously lawful and diminish the value of property devoted to such business, cannot be said to deprive them of their liberty or property without due process of law. Nor does it for similar reasons violate the prohibition against impairing the obligations of contracts, nor that which forbids discrimination against citizens of other states or citizens of the United States; and such a law, in so far as it prohibits the sale of liquors in existence at the time of its passage, is not an *ex post facto* law, since, if it lessens the value of such liquors, such civil consequence does not make it retroact criminally in such sense as to bring it within the constitutional prohibition against laws of that character. . . . If a statute is not open to such objections, certainly a state constitutional provision is free from them."

* * *

"We do not hesitate to hold that the state, in the lawful exercise of its police power could and did revoke the license of every person theretofore authorized to sell intoxicating liquors in Arizona, and such revocation went into effect on January 1, 1915."

The Supreme Court of the United States enunciated the same principle in Boston Beer Company v. Massachusetts, 97 U.S. 25 (1877) at 32-33:

"If the public safety or the public morals require the discontinuance of any manufacture or traffic [of intoxicating liquors], the hand of the legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals

or corporations may suffer. *All rights are held subject to the police power of the State.*"

* * *

"Since we have already held, in the case of *Bartemeyer v. Iowa*, that as a measure of police regulation, looking to the preservation of public morals, a State law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States, we see nothing in the present case that can afford ony sufficient ground for disturbing the decision of the Supreme Court of Massachusetts." (Emphasis supplied.)

State control of liquor licenses under the police power ranges from complete prohibition to lesser degrees of regulation and surveillance. Kearns v. Aragon, 333 P.2d 607, 610 (N.M. 1958). It is the province of the Legislature to determine to what extent such regulation shall be exercised. The prohibition of the leasing of liquor licenses comes within such state control.

Judgment affirmed.

LORNA E. LOCKWOOD
Vice Chief Justice

Concurring:

JESSE A. UDALL
Chief Justice

FRED C. STRUCKMEYER, JR.
Justice

CHARLES C. BERNSTEIN
Justice

RENZ L. JENNINGS
Justice

Supreme Court
State of Arizona
Phoenix

March 25, 1964

No. 8182

R. S. HOOPER, *Appellant*,

v.

JOHN A. DUNCAN, *Superintendent*,
Department of Liquor Licenses
and Control of Arizona;

ELMO RUNNELS (TEX) ADKINS and
DOROTHY L. ADKINS, his wife, *Appellees*.

The following action was taken by the Supreme Court of the State of Arizona on March 24, 1964, in regard to the above-entitled cause:

"ORDER: Motion for Rehearing — DENIED."

SYLVIA HAWKINSON, *Clerk*

By LUCILE BROOKS
Assistant Clerk

Minne & Sorenson
Attention: Joe Contreras
609 Luhrs Building
Phoenix, Arizona

Darrell F. Smith
Special Asst. Atty. Genl.
318 Valley Natl. Bank Bldg.
Mesa, Arizona
(For the Attorney General)

Gerald B. Hirsch
182 N. Court Avenue
Tucson, Arizona

Charles E. Marshall
6th Floor Luhrs Tower
Phoenix, Arizona

John K. Mesch, Jr.
239 N. Church Ave.
Tucson, Arizona

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA IN AND
FOR THE COUNTY OF MARICOPA

ORDERS AND JUDGMENT

No. 156228

FRED D. EVANS, *Plaintiff*,

vs.

JOHN A. DUNCAN, *Superintendent*,
Department of Liquor Licenses
and Control of Arizona; and
H. WALKER HARRISON, *Defendants*.

No. 156229

R. S. HOOPER, *Plaintiff*,

vs.

JOHN A. DUNCAN, *Superintendent*,
Department of Liquor Licenses
and Control of Arizona; and
ELMO RUNNELS (TEX) ADKINS and
DOROTHY L. ADKINS, his wife, *Defendants*.

On November 27, 1963, the following appeared in court:

The plaintiffs Evans and Hooper, by their attorneys, Mr. Richard Minne and Mr. Joe W. Contreras.

The defendant Duncan in his official capacity as Superintendent of the Department of Liquor Licenses and Control of Arizona, by Assistant Attorney General, Mr. Darrell F. Smith.

The defendant Harrison, by Mr. Richard Filler of the firm of Kramer, Roche, Burch & Streich, and

The defendants Adkins, by Mr. Charles E. Marshall.

Mr. W. T. Holmes, an attorney of Tucson, petitioned for leave to appear amicus curiae, and this petition was granted.

On stipulation it was ordered consolidating these cases, the same to be presented to the court on limited issues on an agreed statement of facts with all briefs being simultaneously filed on December 6th. The limitation of issues eliminated from the consideration of the trial court all matters save and except certain constitutional questions, all such eliminated or reserved matters to be postponed for later consideration. No parties are to be prejudiced in their later rights as between themselves in relation to any reserved matters.

Prior to December 6th, an agreed statement of facts was lodged with the court bearing the signatures of all parties except Harrison. This original will be filed in Cause No. 156229 as of the date of the signing of this order.

On December 6th, at approximately the hour of 5 p.m., the following attorneys appeared and simultaneously presented their respective briefs to the court, namely, Mr. Minne, Mr. Smith, Mr. Marshall, and Mr. Holmes. These will be filed in Cause No. 156229 as of the date of the filing of this order. There was an extended discussion. Harrison had not joined in the agreed statement and his attorneys had not filed a brief. Mr. Minne objected to any extension of time in relation to Harrison and the court is in agreement with Mr. Minne's position in this respect.

Mr. Minne moved the court for an order vacating the order of consolidation in view of the failure of Harrison to join as above recited. Objections were presented to this motion.

IT IS ORDERED vacating the order of consolidation of these causes and from this point forward this order relates only to Cause No. 156229.

The sole issue is the constitutionality of the legislative act which prohibits further "leasing" of liquor licenses and which terminates all "leases" of liquor licenses as of December 31, 1963 unless they have theretofore expired by their own terms, in which event they shall not be renewed.

It is the opinion of the court that nicety of legal terminology in defining the relationship between persons in the position of Hooper and persons in the position of Adkins is not essential to the determination of this cause. The Legislature has used the term "lease," which is a term of general and loose usage in the legal profession in relation to these arrangements. The contractual relation under consideration as evidenced by the exhibits to the Hooper memorandum are such as are in fact the subject matter of the legislative act which is under consideration. It was admitted at the argument that the Superintendent has knowledge of this and similar arrangements, copies thereof being on file in his office. The Supreme Court has recognized the existence of rights as between the contracting parties.

A liquor license, as between the State and the record owner or holder thereof, that is to say, the person who actually operates under the license, is more than a mere privilege subject to the whims of the State. It is true

that it is an annual license. On the other hand, the State may not arbitrarily refuse to renew it. Nevertheless, it is true that the Legislature has the power to enact reasonable legislation in relation to the terms and conditions for the annual renewals, even in relation to licenses in existence as of the time of the enactment of the legislation.

While it is true that the license in question in which Hooper claims an interest could have been terminated or recaptured by the State by virtue of acts on the part of Adkins and without fault on the part of Hooper, Hooper nevertheless remained as a party in interest in the license. The State has declared that it would not renew licenses from and after the 31st day of December, 1963, where there was such a dual interest. Hooper did not thereby lose the license in which he claimed an interest as under the law that license is required to be returned to him. Adkins, on the other hand, will be permitted to continue business under a new license which the State if required to issue in his name free of any claim of Hooper. This is a valid exercise of police power as between the State and the person operating the license whether that person be held to be an owner, a holder, a licensee, or be otherwise described.

This court does not herewith determine the effect on the rights and obligations as between Hooper and Adkins in relation to the written contracts which they have entered into. These matters are expressly reserved. This order relates only to the right and duty of the Superintendent as of September 31, 1963, in relation to the license in question and in relation to the returning of that license to Hooper and the issuing of another license to Adkins as set forth by the legislative act which is now under consideration.

The court finds that the statute is constitutional in relation to the interrelation of the Superintendent and the person who has the responsibility for the operation of the license.

There being a denial of relief as to the Superintendent, it is the opinion of the court that Civil Rule 58 (d) applies and that the five-day rule for the approval of forms of judgment is not applicable. It is the opinion of the court that the controversy between Hooper and the Superintendent is severable from the controversy between Hooper and Adkins and, therefore, Civil Rule 58-4(b) is applicable and pursuant to said rule the court expressly finds that there is no just reason for delay in the entry of the judgment as to the Superintendent.

IT IS ORDERED, ADJUDGED AND DECREED that this Cause No. 156229 be and the same is hereby dismissed as to John A. Duncan, Superintendent, Department of Liquor Licenses and Control of Arizona, and no just reason for delay being present,

IT IS FURTHER ORDERED directing the Clerk of this Court to enter this judgment upon the filing thereof with the said Clerk.

DONE IN OPEN COURT this 10th day of December, 1963.

HENRY S. STEVENS
Judge

cc Mr. Richard Minne
Mr. Darrell F. Smith
Mr. Charles E. Marshall
Mr. Richard Filler
Mr. W. T. Holmes of Tucson.

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

No. 8182

R. S. HOOPER, *Appellant*,

vs.

JOHN A. DUNCAN, *Superintendent*,
Department of Liquor Licenses
and Control of Arizona;
ELMO RUNNELS (TEX) ADKINS and
DOROTHY L. ADKINS, his wife, *Appellees*.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. NOTICE IS HEREBY GIVEN that R. S. HOOPER, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Arizona affirming the Orders and Judgment of the Superior Court of the State of Arizona, in and for the County of Maricopa, entered in this action on March 24, 1964, at which time the Supreme Court of the State of Arizona entered an order denying Appellant's Motion for Rehearing. Appellant's Motion for Rehearing was duly filed with the Supreme Court of the State of Arizona pursuant to the provisions of Rule 9 of said Court, and requested the said Court to grant a rehearing of its written Decision which was rendered on February 26, 1964.

This appeal is taken pursuant to 28 U.S.C. 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint filed by Appellant R. S. HOOPER with the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229, on November 14, 1963;

2. Answer filed by Appellees ELMO RUNNELS (TEX) ADKINS and DOROTHY L. ADKINS, his wife, in the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229, on November 27, 1963;

3. Answer filed by Appellee JOHN A. DUNCAN with the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229, on November 27, 1963;

4. The document designated "Agreed Statement of Facts," which was filed by the Appellant and Appellees with the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229, on December 10, 1963;

5. The "Orders and Judgment" filed by the Honorable Henry S. Stevens, Judge, in the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229, on December 10, 1963;

6. All minute entries entered by the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229.

7. Notice of Appeal filed by the Appellant R. S. HOOPER, with the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229, on December 12, 1963.

8. Bond for Costs of Appeal filed by the Appellant R. S. HOOPER with the Superior Court of the State of Arizona, in and for the County of Maricopa, in Cause No. 156229, on December 16, 1963;

9. Written Decision of the Supreme Court of the State of Arizona, in the case of R. S. HOOPER, Appellant, vs. JOHN A. DUNCAN, Superintendent, Department of Liquor Licenses and Control of Arizona; ELMO RUNNELS (TEX) ADKINS and DOROTHY L. ADKINS, his wife, Appellees, Supreme Court Cause No. 8182, rendered on February 26, 1964;

10. Motion for Rehearing filed by Appellant R. S. HOOPER with the Supreme Court of the State of Arizona, Supreme Court Cause No. 8182, on March 12, 1964.

11. Objection to Appellant's Motion for Rehearing filed by Appellee JOHN A. DUNCAN, with the Supreme Court of the State of Arizona, Cause No. 8182, on March 23, 1964:

12. Objections to Motion for Rehearing filed by Appellees ELMO RUNNELS (TEX) ADKINS and DOROTHY L. ADKINS, his wife, with the Supreme Court of the State of Arizona, Cause No. 8182, on March 20, 1964.

13. Order of the Supreme Court of the State of Arizona denying Appellant's Motion for Rehearing in Supreme Court Cause No. 8182 which was rendered on March 24, 1964.

III. The following questions are presented by this appeal:

1. Whether legislation enacted in 1961 by the Legislature of the State of Arizona, and subsequently codified in Sections 4-203 (E) (F) and (G) and 4-211 of the Arizona Revised Statutes, which pro-

hibits the future leasing of liquor licenses and terminates all existing leases of liquor licenses on December 31, 1963, is constitutional; namely, does such State legislation unconstitutionally impair the obligation of a contract in contravention of Article I, Section 10, of the Constitution of the United States of America?

2. Whether legislation enacted in 1961 by the Legislature of the State of Arizona, and subsequently codified in Sections 4-203 (E), (F) and (G) and 4-211 of the Arizona Revised Statutes, which prohibits the future leasing of liquor licenses and terminates all existing leases of liquor licenses on December 31, 1963, is constitutional; namely, does such State legislation deprive Appellant R. S. HOOPER of property without due process of law and deny him equal protection of the law in contravention of Amendment XIV to the Constitution of the United States of America?

MINNE & SORENSON

By /s/ RICHARD MINNE
Richard Minne

By /s/ JOE W. CONTRERAS
Joe W. Contreras

Attorneys for Appellant
R. S. Hooper
609 Luhrs Building
Phoenix, Arizona

PROOF OF SERVICE

I, JOE W. CONTRERAS, an attorney in the offices of Messrs. MINNE & SORENSON, attorneys of record for R. S. Hooper, Appellant herein, depose and say that on the 18th day of June, 1964, I served a copy of the

foregoing Notice of Appeal to the Supreme Court of the United States on ELMO RUNNELS (TEX) ADKINS and DOROTHY L. ADKINS, his wife, Appellees herein, by delivering the same to the receptionist in the offices of CHARLES E. MARSHALL, counsel of record for said Appellees, located at 10th Floor, Luhrs Tower, Phoenix, Arizona.

/s/ JOE W. CONTRERAS
Joe W. Contreras

Subscribed and sworn to before me this 18th day of June, 1964.

/s/ ALICE HUSIR
Notary Public for the
State of Arizona

My commission expires:

April 13, 1968

PROOF OF SERVICE

I, JOE W. CONTRERAS, an attorney in the offices of Messrs. MINNE & SORENSON, attorneys of record for R. S. HOOPER, Appellant herein, depose and say that on the 18th day of June, 1964, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States of America on JOHN A. DUNCAN, Superintendent, Department of Liquor Licenses and Control of Arizona, Appellee herein, by delivering the same to the receptionist in the offices of the Attorney General of the State of Arizona, counsel of record for said JOHN A. DUNCAN, located at the State Capitol Building, Phoenix, Arizona.

s JOE W. CONTRERAS
Joe W. Contreras

Subscribed and sworn to before me this 18th day of June, 1964.

s ALICE HUSIR
Notary Public for the
State of Arizona

My commission expires:
April 13, 1968